

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EDGAR BRONFMAN, JR., :

v. :

VIVENDI S.A., THE BENEFIT EQUALIZATION PLAN
OF VIVENDI S.A., AND THE HUMAN RESOURCES :
COMMITTEE OF THE BOARD OF DIRECTORS OF
VIVENDI S.A., :

No. 07-CV-2875 (GBD)

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**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS**

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New York, New York
May 30, 2007

Defendants Vivendi Holding I Corporation, the Benefit Equalization Plan of Vivendi S.A. (“Benefit Equalization Plan” or “BEP”), and Sarah Frank, in her capacity as a member of the Human Resources Committee of the Board of Directors of Vivendi S.A. (“Human Resources Committee” or “Committee”) (collectively, “Defendants”), submit this memorandum in support of their motion to dismiss the complaint pursuant to (1) Section 514 of the Employment Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1144, on the ground that the fourth, fifth, and sixth causes of action asserted in the complaint are pre-empted by federal law; (2) Rule 12(b)(6) of the Federal Rules of Civil Procedure, on the ground that the second, third, fifth, and sixth causes of action asserted in the complaint fail to state a claim upon which relief may be granted; and (3) Rule 12(b)(6), on the ground that Plaintiff’s claims for relief under ERISA § 502(a)(3) cannot provide the basis for a claim otherwise asserted under ERISA § 502(a)(1). 29 U.S.C. §§ 1132(a)(1), (a)(3).

In accordance with the Stipulation dated May 25, 2007, which was filed with this Court on behalf of both Plaintiff and Defendants, Defendants hereby join, adopt, and incorporate by reference Sections II.A, III, IV, and V of the Memorandum of Law in Support of Defendants’ Motion to Dismiss that was filed on May 8, 2007. Defendants respectfully request that this Court dismiss the complaint on these grounds.

Dated: New York, New York
May 30, 2007

Respectfully submitted,

DEBEVOISE & PLIMPTON LLP

By: /s/ Joseph P. Moodhe

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